



15 APRIL 2016

ANNEXURE 1 Da: REPORT OF THE MINISTERIAL TASK TEAM APPOINTED BY MINISTER ANGIE MOTSHEKGA TO INVESTIGATE ALLEGATIONS INTO THE SELLING OF POSTS OF EDUCATORS BY MEMBERS OF TEACHER UNIONS AND DEPARTMENTAL OFFICIALS IN PROVINCIAL EDUCATION DEPARTMENTS

WRITTEN SUBMISSIONS ON BEHALF OF SADTU

Introduction

1. SADTU received a letter dated 1 April 2016 from the Honourable Minister AM Motshekga, MP ("**the Minister**"). Attached to the letter is a report of the Ministerial Task Team ("**MTT**") appointed by the Minister to investigate allegations into the selling of posts of educators by members of teacher unions and departmental officials in provincial education departments. The letter states *inter alia* that the report of the MTT has been made available to SADTU, in order to enable it "*to make written responses by 15 April 2016*".
2. It is understood by SADTU that the purpose of the invitation to make written responses is to enable the MTT to consider such responses so that, where justifiable, it could change its views, opinions and findings expressed in the report. Otherwise, the invitation to submit written responses would serve no purpose.
3. In line with SADTU's understanding above, the letter goes on to state the following:

“The MTT will consider your submissions and respond to them as part of an Annexure to the Report. There will also be an opportunity to make further representations to the MTT before 29 April 2016.”

4. SADTU understands from the above statement that the MTT will consider SADTU’s written responses and respond to them in an annexure prepared by the MTT to be part of its report. Such an annexure would then be presented to SADTU so that it could make further representations to the MTT before 29 April 2016.
5. Surprisingly, the letter goes on to state that *“the report plus the Annexure will be released to the public on 6 May 2016”*. The following are of concern to SADTU flowing from this statement:

5.1 There is no mention or undertaking that the report, when released publicly on 6 May 2016, would include the further representations by SADTU to be made before 29 April 2016 or the MTT’s responses to such further representations. SADTU requests that the final report to be released to the public on 6 May 2016 must incorporate SADTU’s responses that are set out below; the MTT’s responses to such (SADTU’s) responses; as well as SADTU’s further representations that it is afforded an opportunity to make before 29 April 2016 and the MTT’s responses to such further representations if made at all. Otherwise, SADTU’s rights would be adversely affected if this process is not followed and reserves its rights in this regard.

5.2 It is unclear whether the “Annexure” referred to would comprise only of the MTT’s responses to SADTU’s responses that are set out below, or both SADTU’s responses and the MTT’s responses to them. For a balanced picture to be conveyed to the public, SADTU requests that the Annexure referred to should comprise of both SADTU’s responses set out below and the MTT’s own responses thereto.

6. The letter goes on to invite SADTU to bring to the attention of the MTT *“any member who is implicated in this Report, but was not given an opportunity to state his/her case.”* This invitation is surprising and of concern to SADTU; and SADTU does not accept the responsibility that the invitation places upon it. The MTT conducted the

alleged investigation. It made findings, drew conclusions and made recommendations. It is aware of which individual its findings, conclusions and recommendations implicate. The individuals concerned are employed by the Department of Basic Education ("**the Department**"), hence they are members of SADTU. It is the responsibility of the Department, and the MTT acting on its behalf, to ensure that all individuals that are adversely affected by its far-reaching findings and conclusions are treated procedurally fairly. If they are not, such individuals may have recourse against the Department or the MTT.

7. Notwithstanding the concerns expressed above, and with a clear reservation of all its rights, SADTU sets out its responses to the MTT report below. We are instructed to act on its behalf in setting out those responses.

8. We structure SADTU's responses below in the following manner:

8.1 First, we address the relevant legal framework in which the MTT conducted its investigations, and the implications that flow from such a framework.

8.2 Secondly, we deal with the background in brief.

8.3 Thirdly, we give a brief background to the investigation;

8.4 Fourthly, we give specific responses to certain findings in the report. These responses show that the investigation, such as it was, and the findings made, fall far short of the standards set by the legal framework as discussed; and if persisted with may be susceptible to correction in proceedings for judicial review, or give rise to actions for defamation.

8.5 Fifthly, we conclude.

9. The relevant legal framework

10. The Minister is the member of Cabinet responsible for basic education. In that capacity she is the executive authority of the Department. By law she exercises only those powers that are conferred on her by the Constitution and the law, particularly the South African Schools Act and the Employment of Educators Act.⁸²

11. It follows that when the Minister performs her functions under the Constitution and the relevant law, she exercises public powers. All exercises of public powers must comply with the principle of legality under the Constitution. This requires that such exercises of public powers must be authorised by law and rational. Rationality is a minimum requirement for the exercise of all public powers by members of the Executive.⁸³ If not, they are susceptible to challenge by way of proceedings for judicial review.

12. Where the Minister appoints a body such as the MTT to exercise public powers of investigation on her behalf, the MTT is also bound to comply with the principle of legality under the Constitution. In other words, because the MTT exercises powers on behalf of the Minister, and powers conferred to it by the Minister, it too must comply with the principle of legality under the Constitution when exercising such powers, failing which the same consequences would follow, as if the Minister had personally exercised the powers of investigation. This flows from the fact that the MTT performs a public function, i.e. the investigation.⁸⁴

13. The direct implications of the above is the following in respect of the MTT:

13.1 Its purported investigation, findings and recommendations had to stay within the four corners of its terms of reference and mandate. It is not entitled to exceed its powers and mandate as conferred by its terms of reference.

⁸² MTT report p 36.

⁸³ *Pharmaceutical Manufacturers of SA: in re Ex Parte President of the RSA* 2000 (2) SA 674 (CC) para 90.

⁸⁴ *AllPay Consolidated Investment Holdings (Pty) Ltd and others v Chief Executive Officer of the South African Social Security Agency and others (Corruption Watch and another as amici curiae)* (No 2) 2014 (6) BCLR 641 (CC) para 52.

13.2 Its findings must bear a rational link to its terms of reference. It has no right in law to make findings that bear no rational relation to its terms of reference because only the terms of reference set out the purpose of the investigation that it was authorised to conduct.

13.3 Its findings must bear a rational link to the evidence actually presented to it in relation to the matters that fall within its terms of reference. Such evidence must provide support for the findings made. It has no right to make findings where there are no evidential basis and damage reputations and infringe rights in the process.

13.4 Its findings must not breach the common law, including the common law rules of defamation.

14. Furthermore, to be lawful and rational, an investigation must meet certain minimum standards. The SCA set out the minimum standards in the case of *The Public Protector v Mail and Guardian Ltd and Others* 2011 (4) SA 420 SCA, where it held that:

“But I think there is nonetheless a least one feature of an investigation that must always exist – because it is one that is universal and indispensable to an investigation of any kind – which is that the investigation must have been conducted with an open and inquiring mind. An investigation that is not conducted with an open and inquiring mind is no investigation at all. That is the benchmark against which I have assessed the investigation in this case”.

“That state of mind is one that is open to all possibilities and reflects upon whether the truth has been told. It is not one that is unduly suspicious but it is also not one that is unduly believing. ... It is also not a state of mind that remains static. ...But whatever the state of mind that is finally reached, it must always start out as one that is open and inquiring”⁸⁵. (Emphasis added)

15. An investigation that is manifestly actuated by an appearance of bias from the outset or at the end would not comply with the benchmark set out in the ***Mail & Guardian*** case above. As we submit below, this is precisely the nature – start and end – of the investigation in this case.

⁸⁵ *The Public Protector v Mail and Guardian Ltd and Others* 2011 (4) SA 420 SCA, page 9, para 21-22.

16. SADTU's responses set out below demonstrate that the investigation purportedly conducted in this case, and the findings and conclusions reached, fall far below the legal requirements set out above. If not changed, as SADTU submit, the report, in its findings and conclusions, would be susceptible to correction by way of proceedings for judicial review; and may give rise to action for defamation.

Background

17. The MTT was established after an allegation of selling of posts was published in the Media. SADTU was requested to submit representation or respond to specific questions in writing by the MTT.

18. SADTU responded to 7 questions posed by the MTT. SADTU further indicated that it would submit further representations as the 7 questions did not cover everything that it wished to raise.

19. SADTU submitted supplementary submissions with annexures.

20. Although the MTT report states that "*SADTU asked for permission to submit amplified submissions with supporting documents,*⁸⁶ no further mention is made of the contents of the supplementary submissions in the report. There is no doubt that the contents of these supplementary submissions were ignored and not taken into account in the preparation of the report. For the sake of completeness, and in light of the fact that the supplementary submissions were not considered, we attach them to this document as annexure "**S1**". The supplementary submissions must be read as part of SADTU's responses set out below.

21. in the supplementary submissions SADTU states in summary that⁸⁷:

⁸⁶ See MTT Report page 109

⁸⁷ See Supplementary Submission of SADTU

21.1 The practice of selling posts whether through the exchange of money or other favours such as sexual favours is wide spread though under reported. The under reporting can be attributed to the fact that the sellers and buyers of posts operate in high secrecy and, in certain instances, accompanied by intimidation or threats of intimidation.

21.2 It has never been SADTU's position to condone or encourage this behaviour of selling posts.

21.3 Whenever information came to SADTU's attention regarding such practices, it took steps to deal with matters raised, for example, the allegation relating to Kalfontein Primary School in 2006, in which SADTU reported the matter to the Gauteng Department of Education for investigation and appropriate action.

21.4 When City Press made the allegation that SADTU is selling posts, the union challenged the statement because it does not support or condone this conduct.

21.5 The National Executive Committee of SADTU on 12 May 2014 in the secretarial report made its position clear that SADTU distances itself from such conduct, i.e. the posts for cash scam, and further that the union has never received a cent from the proceeds of this conduct.

21.6 The union further wrote a letter to the Education Labour Relations Council ("ELRC") and the South African Council of Educators requesting them to conduct investigations collectively or individually to establish facts regarding the conduct so that appropriate action could be taken.

21.6 SADTU made several media statements in which it stated to its members inter that all those who might have information about the posts for cash scam should approach the Department so that the matter could be dealt with, i.e. an investigation conducted and appropriate action taken.

21.7 All Provincial structures of SADTU issued media statements after their respective provincial congresses encouraging members to report any information relating to the posts for cash scam.

21.8 SADTU as an organisation is not involved in the posts for cash scam, nor does it support or condone it. It would, in the circumstances, be grossly unfair to attribute blame to SADTU for the actions of individuals, whether they are ordinary members or officials of the union. Such actions are contrary to the position of the union and it has publicly condemned them.

21.9 The annexures to the supplementary submissions provided proof of actions taken by SADTU to condemn the conduct of posts for cash and related conduct.

Specific responses to certain of the contents of the MTT report

Terms of reference

22. The Report starts by quoting the terms of reference for the MTT appointment and investigation⁸⁸. We do not repeat the contents of the terms of reference here.

23. The MTT makes a point that:

“Most of the initial media allegations focused on the dominant union, however given its brief, the MTT had to investigate the role of all parties in the appointment process and not only the one union⁸⁹.”

24. This cannot be correct as no other union was investigated by the MTT. There is no mention in the report of any individual’s affiliation except SADTU. It is clear that the MTT had a biased focus on SADTU.

25. The MTT states “that it has not been the purpose of the MTT to apportion blame or to indict any person or organisations⁹⁰”. It states further that “the MTT used media

⁸⁸ MTT Report page 10

⁸⁹ MTT Report page 11

⁹⁰ MTT Report page 14

allegations of the buying and selling of posts as a focus for discussions with District Managers and Teacher Unions in each Province⁹¹”.

26. The statement quoted immediately above is not entirely correct because the MTT did not only investigate allegations in the Media but went further to investigate other allegations outside those mentioned in the Media, for example, it appears or claims to have investigated and made damning findings on *inter alia*:

26.1 the relationship between SADTU, the SACP and the ANC and its purported impact on education or the delivery of education in the country;

26.2 an issue the MTT describes as cadre deployment;

26.3 alleged SADTU tactics to influence decisions in the Department at different levels;

26.4 SADTU’s choice of political alliance with the ANC and its purported impact on education or the delivery of education in the country.

27. All of the above matters, which the MTT purportedly investigated and made findings on fall outside its terms of reference.

28. The overview in the report of findings from the forensic investigation into specific cases states in clear terms that “individuals saw an opportunity to use the investigation to voice their grievances not always on factual grounds. Of approximately 120 matters that were brought to the MTT’s attention it was found that several of the allegations were unfounded, based on rumour, malice or hearsay”⁹². (Emphasis added)

29. The MTT clearly went ahead to entertain such grievances even though they fell outside its terms of reference. The MTT went further to apportion blame on SATDU based on

⁹¹ MTT Report page 15

⁹² See MTT Report page 16

the grievances that it admits were “not always on factual grounds”. This conduct, of investigating and making findings adverse to SADTU based on such admittedly baseless allegations that also fall outside the terms of reference for the MTT, exceeds the terms of reference of the MTT and is irrational.

30. Profiling of SADTU members

31. The MTT indicates in its report that it had investigated the role of all parties in the appointment process and not only the one union. This statement is not correct as no other union has been investigated. It is clear from the report that there has been adverse profiling of SADTU members where allegations are made. The same does not apply to individuals that may be members of other unions. For example, one of allegations that has been allegedly investigated is in relation to Mr Els⁹³, a Principal, who is alleged to have appointed his son as a technology teacher and his wife also, without proper procedures and overpaying his wife in the process.

32. The finding of the MTT is that Mr Els acted improperly and recommended that disciplinary steps be taken against him for nepotism and corruption as he used his position as a Principal to favour his wife and his son. But what is surprising to SADTU is that the MTT did not attempt to establish Mr Els’ union affiliation, nor the affiliation of his wife and son. Had any of them been a member of SADTU, as is clear from the attitude of the MTT displayed in the report, Mr Els and his family would have been profiled and their union membership indicated as SADTU so that blame could be placed on SADTU as a union. This shows clearly that the MTT was hell bent to condemning SADTU in its investigation and findings.

33. The above shows a lack of an open and enquiring mind in respect of the investigation allegedly conducted. It is also an irrational conduct on the part of the MTT.

34. Ad Recommendation 11

⁹³ See Report page 55-56

35. The MTT makes the following finding:

“Data submitted to the task team suggests that cadre deployment by unions have weakened the education system. It is alleged for example that SADTU determines who and for how long HOD’s in the many provinces stay in office, and that it deploys cadres into levels of provincial departments regardless of their qualifications. However, SADTU is not alone in exercising cadre deployment”⁹⁴.

36. The MTT makes this finding without any evidence. There is no witness recorded to have given evidence in support of the damning finding, except for unsubstantiated statements attributed to NATU and NAPTOSA. Furthermore, such allegations or statements were never put to SADTU to either rebut or admit them. The above finding is baseless in that:

- It said that it is based on the “database submitted” to the MTT, but the MTT does not indicate or show what data was submitted to it to support this conclusion.
- Secondly, according to the alleged data submitted, the involvement of SADTU has weakened the education system. The MTT report does not indicate how the education system has been weakened, and in respect of which provinces. Significantly, it directly contradicts a finding by the MTT that *“Despite or because of education in the province [North West province] being wholly in the hands of SADTU, the 2014 matrics did exceptionally well”*,⁹⁵ which suggests a positive impact or contribution by SADTU to education.
- The MTT does not even indicate how SADTU determined which HOD’s position; for how long an HOD in a province would stay as a result of SADTU’s actions; and which HOD’s by name are affected or involved.
- The MTT does not even give an example of any official who is a SADTU cadre deployed in a province without qualifications.
- Lastly, it is found that SADTU is not alone in this exercise of cadre deployment. However, the MTT does not indicate which other union is involved in this exercise of cadre deployment if it is not only SADTU, again reflecting manifest bias and irrationality.

⁹⁴ See MTT Report, page 25

⁹⁵ MTT Report p 88.

37. The above is once again an instance of an investigation not conducted with an open and inquiring mind. It is clear that the MTT simply accepted the negative statements by NATU, NAPTOSA and the single HOD in the North West province as facts. It is logical that NATU and NAPTOSA, as SADTU's competitors would have nothing positive to say about SADTU. A single HOD's claims ought to have properly probed and this did not happen.

Chapter 3 – Summary from the Forensic Investigation

38. The MTT conducted this investigation with the assistance of an audit firm, which was to conduct a forensic investigation into the allegations made. In some case, no investigation was done but reliance was placed on the departmental investigations and the outcome of those investigations were taken as fact and incorporated into the MTT report as findings.

39. For example, one case relates to the Gauteng Department of Education which had appointed a firm of attorneys called Nchupetsang Attorneys in 2014 to investigate allegations of the sale of posts in the Gauteng Province. The forensic investigators took the findings of the attorney's investigation as the findings of the MTT without conducting any investigations of its own into the allegations. This is woefully below the benchmark for investigations and reflects irrational conduct.

40. Some of the findings of the investigation by the firm of attorneys are that:

- *The allegations of posts being sold for cash were found to be true;*
- *The parties involved operate like a network involving SGB members, union officials, and Principals;*
- *SADTU takes advantage of SGB members who are poor and uneducated by influencing them to recommend their own preferred comrades into promotional positions;*
- *In most cases, there is no proof or evidence to confirm this corruption allegations and this makes it difficult for most teachers who wants to report activities;*

- *Most teachers (SADTU members) with minimum qualifications are placed into positions which they do not qualify for⁹⁶.*

41. The MTT, in an attempt to investigate the allegations or findings that are contained in the report of the attorneys, endeavoured to obtain written statements from the witnesses concerned, but failed to do so. It is difficult then to comprehend how the MTT made findings of fact from the report of another investigation without having verified or conducted an independent investigation. This is further so because SADTU was not involved during the investigation of Nchupetsang Attorneys. The finding is made that SADTU takes advantage of SGB members who are poor and uneducated by influencing them to recommend their own preferred comrades into promotional positions. However, the MTT does indicate any specific instances in which the alleged conduct took places, or give names of those involved, or explain how SADTU as an organisation took advantage of SGB members.

42. The MTT, by its own admission, could not obtain written statements from witnesses and further that witnesses failed to cooperate. How then could it make a finding adverse to SADTU when witnesses fail to cooperate; and further take the Nchupetsang Attorney's investigation report as fact and incorporate that report's findings in its findings without even having put the report (of Nchupetsang) to SADTU for comment?

43. One allegation allegedly investigated by the MTT is in relation to the appointment of Mr Motang who did not have the qualification and experience for the relevant post⁹⁷. The MTT found that Mr Motang did not meet the requirements for the position from the onset. His short-listing and subsequent appointment was irrational and indefensible. This is one of the cases where it clearly shows that blame is attributed to SADTU as an organisation unfairly because in this instance the MTT does not indicate how Mr Motang's affiliation to SADTU influenced his appointment without the requisite qualifications. It could have been any other person who is not a member of

⁹⁶ MTT Report page 54-55

⁹⁷ MTT Report page 59

SADTU and there is no evidence of SADTU's involvement in influencing his appointment without the required qualifications.

44. The other allegations are in relation to the appointment of several Principals in Limpopo⁹⁸ where it was alleged that all the Principals were appointed because of their affiliation to SADTU. However, the investigation found that all the five Principals were appointed because they were the best candidates for the positions. The allegation was that their appointments were as a result of SADTU affiliation and SADTU's influence. However, the MTT in its findings does not make any finding that allegations of SADTU's involvement or influence were unfounded or baseless.
45. A similar omission by the MTT is in relation to the allegation allegedly investigated that a certain Mr Gosanie was appointed a Principal because he was a preferred candidate for SADTU and his appointment was due to the SADTU's influence. The MTT could not find any evidence to support the allegation, particularly in relation to the influence of SADTU. However, in its findings the MTT does not indicate that allegations that SADTU was involved or influenced the interview and outcome were baseless or unfounded⁹⁹.
46. An investigator with an open and inquiring mind would record that allegations that suggested SADTU's involvement in wrongdoing were baseless and rejected if no evidence was produced to support them. The MTT does not do this because it has a closed mind when it comes to SADTU, and displays a commitment to find against SADTU at all costs, even in the absence of proper evidence.

Unfair comments by MTT directed at SADTU

⁹⁸ MTT Report page 64-67

⁹⁹ See MTT Report page 68

47. One of the points to be made to show that the MTT was unfairly targeting SADTU and not any other organisation is the unfounded comments that are made against SADTU. One of such is a comment by the MTT¹⁰⁰ that:

“The task team’s general impression is that the strong preponderance of a union or unions in a Province is not good for educators, officials and learners. For example, functionalism has emerged in SADTU and the task team has gained the impression that the provincial sector of SADTU and NAPTOSA has established different degree of independence from their National bodies. One clear example of the need for thought for discussion is that the name SADTU is almost never mentioned by top officials, thus making the union “the elephant in the room” which is so powerfully present that people try to avoid noticing or making direct reference to it”.

48. It is not clear what the basis is, or the relevance is, of this comment by the MTT other than to tarnish SADTU. This further demonstrates a lack of an open and inquiring mind, and undue suspicion against SADTU.

Chapter 5 – A diagnostic analysis of the major issues from interviews conducted by the task team

49. The MTT has on several instances reiterated its mandate which is “the task team has understood its brief to determine whether is substance in the original allegations about the buying and selling of posts and what should be done to reduce opportunity for such forms of corruption and to make recommendations which could have implications policy to the Minister”. Despite, it’s understanding of its mandate to investigate the selling of posts, the MTT went further to include three other mandates that they have self-created. In the analysis, they have included the investigation of:

- The relationship between the Department of Basic Education and Teacher Union;
- School Governing Bodies and their future;
- Some factors that have led to the loss of control by the Department of Education¹⁰¹.

¹⁰⁰ See MTT Report page 90

¹⁰¹ See MTT Report page 123

50. 4This is a clear example of the MTT investigating matters that were outside its terms of reference. It is not clear how the selling and buying of posts has to do with the relationship between the union and the Department or the future of the School Governing Bodies (“SGB”). As far as the mandate to investigate the selling of posts is concerned, the MTT makes a finding that:

“What is most striking is the extent to which most of the allegations of wrongdoing and irregularity are reported to the task team have proved incapable of verification or confirmation”¹⁰². (Emphasis added)

51. The MTT further notes that other investigations have been conducted in the North West and also by the South African Council of Educators, but the reports from such investigations have not been made available.

52. Despite the finding quoted above, the MTT is inexplicably adamant that the selling of posts is prevalent in the Department. It does not provide examples of cases where such allegations were proved.

The relationship between the Department of Basic Education and Teacher Unions

53. “The MTT makes a finding the Department of Education has retained semblances of managerial and administrative control in three of South Africa’s nine provinces”. Those provinces are: Free State, Western Cape and the Northern Cape. A finding is made that¹⁰³:

- *“In all other provinces, SADTU is de facto control. According to the data given to and gathered by the task team this domination by a union has been achieved by using combination of the following ways and means:*
- *It’s use of a repertoire of strategies to coerce teachers, principals, officials and others to exceed to its demands.*
- *By using teacher militancy to pressurise its members to be unionists, first and professional second;*

¹⁰² See MTT Report page 124

¹⁰³ See MTT Report page 125

- *By practicing cadre deployment to ensure the high percentage of managers, decision makers and others with power influence in education are placed in well paid positions where they can prioritise the union's interest;*
- *By using undue influence at different stages of appointment process to ensure its candidates are appointed;*
- *By blocking departmental activities and programmes; and*
- *Using its membership with COSATU to influence the members or the tripartite alliance."*

54. Firstly, as indicated above, the investigation regarding the relationship between the Department and SADTU is outside the mandate or terms of reference of the MTT. Secondly, the MTT makes these findings without any evidential basis. The MTT does not indicate how SADTU coerced teachers, principals or officials to accede to its demands. It does not give examples of instances where SADTU employed such tactics to achieve its demands.

55. Furthermore, the MTT does not provide evidence of teacher militancy, the practice of cadre deployment, or undue influence on the part of SADTU, to come to this conclusion.

56. The last finding made by the task team regards the alleged tactics of SADTU using its membership of COSATU to influence the members of the tripartite alliance. As far as this finding is concerned, it is clear that the MTT relied on the research document referred to in footnote 64. This is a research done by Logan Govender and also by Linda Chisholm.

57. The research document(s) relied on, were never put to SADTU for comment. The MTT simply accepted the research document(s) as fact and attributed blame to SADTU without any investigation been conducted. The context of the researches and the reasons thereof are not explained at all. Nor is the relevance of the researches to the matters that the MTT was mandated to investigate.

58. It is a failure of investigation and irrational for the MTT to simply take a research report prepared in a specific context and in a different time as fact and use it as a basis to make damning findings against SADTU and the alliance partners. The alliance partners are not even trade unions in education and fall outside the terms of reference of the MTT. It is plain here that the MTT chose to pursue a political agenda for an undisclosed and ulterior end. This is unlawful and should be rectified.

59. In any event, the finding is made without any evidential basis in that all the cases investigated by the MTT there is no single credible piece of evidence to show SADTU is employed the strategies and tactics for which it is blamed. The MTT does not even provide examples of proven cases where SADTU coerced teachers, principals, etc., in the pursuit of its illicit ends.

60. Surprisingly, in the same report the MTT finds that:

“No way are these ways and means stated explicitly as SADTU policy. But that does not mean that on the ground, in actual practice, in specific provinces and specific areas or activity members of this organisation do not exercise inappropriate forms of influence or control.”¹⁰⁴

61. The MTT concedes that there exists no SADTU policy to this effect. Therefore, the only logical conclusion is that individuals use the name of the union to further their own interests. It is then difficult to comprehend how the MTT imputes blame on SADTU as an organisation. This once again indicates the unfair profiling of SADTU as the “elephant in the room”.

62. The MTT further makes further comments, findings or raise questions as follows:

62.1 “a further question which has arisen for the task team is whether SADTU is now primarily an educational organisational or not? In the excessive exercise of power and

¹⁰⁴ See MTT Report page 125

control over the education system compatible with its supposed function of serving the professions and protecting the material interest of it's of members?"¹⁰⁵

62.2 "the absence of home grown traditions in the department as an entity is echoed by the way SADTU has adopted an industrial model based on serving workers in factories and the mines. SADTU ought to be an occupational union such as that of nurses. Furthermore, it must be asked why the relationship between the department and the union has to be adversarial when there are common causes for at the transformation of the education of the young."¹⁰⁶

62.3 "conflict between department and union is rarely over policy, it is over power and control"¹⁰⁷.

62.4 "the logical conclusion of the analysis in the section is that undue influence, a polite name for corruption, appears to be endemic to greater and lesser degree in the entire educational system, in offices, in schools, unions and everywhere else. Weak authorities, aggressive unions, compliant principals and teachers eager to benefit from union membership and advancement are a combination of factors that defeat the achievement of quality education by attacking the values of professionalism¹⁰⁸".

63. The above comments or findings by the MTT in relation to SADTU are once again a demonstration of a SADTU targeted investigation, which was aimed at discrediting the union at all costs. All of the above comments are either baseless in that they are not underpinned by any credible evidence. They also fall outside the terms of reference of the MTT. The MTT was not mandated to investigate the relationship between SADTU and the Department.

¹⁰⁵ See MTT Report page 126

¹⁰⁶ See MTT Report page 127

¹⁰⁷ See MTT Report page 127

²⁷ See MTT Report page 128

64. The MTT makes a finding in relation to cadre deployment by SADTU. It found that “teacher unions, especially SADTU, have developed the capacity to offer their members who display as especially loyalty and activism in the union interests, opportunist for appointment to well-paying influential posts in public schools and departmental offices¹⁰⁹”.

65. Once again the MTT makes a baseless finding without evidence. The MTT does not even indicate by means of an example, at least one name out of the approximately two hundred thousand (200 000) members of SADTU who has been given a position for displaying loyalty to the union. There is not even one single case in this report that was investigated by the MTT that can form the basis for such a finding.

SADTU, SACP, COSATU and ANC

66. Once again the MTT has investigated or made findings on matters that were not part of its terms of reference. The MTT has ventured into giving opinions and making findings about the relationship amongst the SACP, COSATU, the ANC and SADTU, which fall outside its terms of reference, and did so without first giving any of these organisations the opportunity to respond or comment. The findings are far-reaching and defamatory of the organisations concerned.

67. The MTT is now plainly attacking the tripartite alliance unfairly by making findings like:

“Here in South Africa the ANC used patronage and deployment from 1994 to stabilise control in the civil service and to dismantle practices saturated with apartheid purposes and function”.

68. Once again the MTT relies, by reference to footnote 70, on a research report or article by one Sylvia Neame,¹¹⁰ without investigating the veracity of the underlying information on which the research report or article was based. This is yet a failure to investigate and is irrational.

¹⁰⁹ See MTT Report page 128

¹¹⁰ See MTT Report page 129

69. The finding about the tripartite alliance relationship is also outside the mandate of the MTT.
70. The MTT further makes a finding that “as a member of COSATU and thus a member of the tripartite alliance, SADTU has achieved access through the ANC and the Communist Party to positions in Parliament and Cabinet.” “The commitment of a teacher union to a one single political party is both dangerous and inappropriate. This means that those educators who joined a union are bound to that party. In the fortunes of the educational system becomes depend on the fortunes of a political process¹¹¹.”
71. Once again the MTT comes to the conclusion of a political nature, falling outside its mandate. It is defamatory as it suggests a corrupt relationship.
72. The MTT again relies for its findings on a research or article by Govender and Patillo. Neither SADTU, COSATU nor the ANC were given an opportunity to respond to the allegations before a finding was made in this regard. The facts underlying the research or article, or its assumptions, were also not investigated by the MTT. The MTT does not even demonstrate by way of example as to who from SADTU received a position in Parliament and in Cabinet for being loyal to the ANC.
73. The MTT makes a finding that “at provincial level SADTU uses its influence to deploy its preferences as principal of schools and senior officials in the Department. The criteria for selecting those persons for such appointments are not necessarily about competitiveness and professionalism or stability, but militancy”¹¹².
74. In coming to this finding once again, the MTT relies on the single interview with the HOD of the North West province where he indicated that eighty five percent (85%) of senior posts in the North West head office are occupied SADTU members; and further

¹¹¹ See MTT Report page 129

¹¹² See MTT Report page 129-130

relies on the research allegedly conducted in 2011 where it was indicated that sixty five percent (65%) of school leaders in Umlazi are SADTU members. The finding about deploying SADTU members as principals or senior officials is broad and unsubstantiated. The MTT does not indicate a single principal who was deployed by SADTU without qualifications or any other person who was deployed by SADTU to fill a senior position in Government without qualifications.

75. There is no basis to blame a union for having high representation and being strong. That is the purpose of a union and this is recognised in all legislation dealing with workplace industrial relations, including the Labour Relations Act. A fact of South Africa's history is also that the education system in certain provinces is predominantly black. Most members of SADTU are black. It makes absolute sense that the appeal of SADTU in the predominantly black provinces is high, because other unions have over the years been seen as apologists of apartheid. This explains the preponderance of SADTU members in positions in the education system in predominantly black provinces and not in provinces such as the Western Cape. This is a historical fact for which the MTT is irrational to blame SADTU.
76. The MTT makes a finding relating to SADTU's choice of the ANC as its single political party. The MTT criticises SADTU for such a decision and makes a finding that such adherence has a major influence on the union's priorities and strategies, which have in fact become apparent, and is not good for education. No other union is given this unfair treatment, which plainly falls beyond the MTT's terms of reference and is irrational. All members of society have a choice as to which political ideology and party to support. There is absolutely no reason to deprive this of SADTU as an organisations and its members as citizens of this country. To do this by the MTT is contrary to the guarantees of freedom, including freedom of association and political choice in the Constitution, which is the supreme law of the land. Any conduct, including that by the MTT, which conflicts with the Constitution is invalid and falls to be set aside and condemned.

South African Council of Educators

77. The MTT makes a finding in relation to the structure of the South African Council of Educators (“SACE”) that “The MTT is of the view that SACE has become sectarian by virtue of the domination of a single Teacher Union and its allegiance to one political party. SACE is a public entity that should use its broad mandate to serve the educational interests of all stakeholders. Reflection on the future of SACE should be driven by the DBE and its associates.”¹¹³
78. The Council of SACE is appointed by the Minister in terms of section 6 of the South African Council of Educators Act 31 of 2000. The Council is, constituted by 25 members, fourteen (14) nominated by the profession on a proportional representation basis. Each organisation nominates and is represented proportionally based on its number of members it represents. These representations are then appointed by the Minister.
79. The MTT suggest that dominance of SADTU in SACE is due to its allegiance to one political party. This finding is without basis and irrational.
80. The SACE represents and reflects the true representation of all stakeholders in line with the South African Council of Educators Act 31 of 2000.
81. The above finding is one example of instances where the MTT demonstrated its closed mined approach to this investigation.

Conclusion

82. For all the reasons set out above, SADTU submits that the MTT should change its findings that have been identified above, or drop them altogether.

¹¹³ See MTT Report Page 145

83. SADTU requests an opportunity to make oral representations to the MTT in support of what is stated above. If such an opportunity is not granted to it, SADTU wishes to confirm that it looks forward to receipt of the “Annexure”, which would comprise the MTT’s written response to the responses in this document, and will make further written submissions on or before 29 April 2016 as promised by the MTT.

84. All of SADTU’s legal rights are reserved.